

**MINUTES OF THE  
SPECIAL DISTRICTS SUBCOMMITTEE OF THE  
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**  
Tuesday, September 5, 2000 - 9:00 a.m. - Room 414 State Capitol

**Members Present:**

Rep. Joseph G. Murray, Co-chair  
Rep. Eli H. Anderson  
Rep. Loretta Baca  
Rep. Marda Dillree

**Members Excused:**

Rep. David L. Gladwell

**Members Absent:**

Sen. R. Mont Evans, Co-chair  
Sen. Scott N. Howell

**Staff Present:**

Mr. Joseph Wade,  
Research Analyst  
Mr. Robert H. Rees,  
Associate General Counsel  
Ms. Joy L. Miller,  
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

**1. Call to Order and Committee Business** - Chairman Murray called the meeting to order at 9:05 a.m.

**2. Withdrawal -**

Mr. Paul Ashton, White City Water Improvement District, reviewed the withdrawal procedures outline on page 27 of the mailing packet. He said the withdrawal process would be administered by the special district Board of Trustees subject to statutory constraints and requirements. Initiation of the process would be by petition or by resolution adopted on the Board of Trustees' own motion. Notice for a public hearing would be both posted and placed in a newspaper. He reviewed the situations under which the board may adopt a resolution excluding land from a district. Mr. Ashton indicated the board would be required to deny the withdrawal if it determines that the proposed exclusion would fail to satisfy certain requirements, result in a breach or default by the district or adversely affect the ability of the district to make any payments or perform any other material obligations, or create an island or peninsula and adversely affect the district's ability or significantly increasing the cost to provide service to the island or peninsula and other areas within the district. After the hearing the board may, by resolution, either reject or approve the withdrawal, or approve the withdrawal of a portion, but not all, of the proposed area with or without conditions. He noted it was the association's belief that a judicial review process would be better than an election process. Exceptions to the basic withdrawal process are drainage and irrigation districts.

Rep. Dillree stated if a petition for withdrawal is denied, the petitioners should be informed of the reasons why. A written response should be required. If a reason is given for the

denial, it may eliminate the need for a court action.

Mr. Mark Anderson, Utah Association of Special Districts, indicated a denial issued strictly due to the passage of time would make it less difficult to convince a court that it was arbitrary and capricious.

**3. Dissolution** - Mr. Jan Furner, Utah Association of Special Districts, stated there are districts they feel need to be dissolved that have remained inactive. Some districts are not providing the service they were intended to provide. He pointed out that in the past it has been difficult to dissolve these districts because of the issue of assets.

Mr. Anderson reviewed the dissolution procedures outline on page 31 of the mailing packet. If there is a duly constituted special district Board of Trustees sufficient in number to form a quorum, the dissolution process would be administered by the board subject to statutory constraints and requirements. If there is no duly constituted board to form a quorum, the dissolution process would be administered by the governing body of the governmental entity that originally created the special district. He discussed the status of inactive and active special districts. Initiation of the dissolution process in inactive districts would be by petition or resolution. Active district may be dissolved only based upon a petition signed by the owners of 100 percent of the privately owned land within the district. Notice for a public hearing would be both posted and placed in a newspaper. Mr. Anderson stated the factors that may affect or prohibit a dissolution include: 1) debt, 2) assets, 3) service and other contracts, and 4) service provided.

Rep. Baca asked what would happen if there is a special district that needs to be functioning but isn't because of its board. Mr. Anderson responded that there are provisions in place that could penalize a nonfunctioning board depending on the circumstances. He indicated his working group could research that issue and report back to the subcommittee.

Mr. Anderson explained debts of a special district must be satisfied and discharged or be assumed by another governmental entity with the concurrence of 100 percent of the bondholders and 100 percent of the holders of other debts of the district. It is proposed that the courts be responsible for the division of assets. All outstanding contracts to which the district is a party must be finally resolved through mutual termination or another entity taking over the service assuming the contracts. Mr. Anderson indicated a district that either has provided service within the past three years or has undertaken planning or any other activity preparatory to the provision of service would be dissolved only if another entity has committed to provide the same service to the area being served with the consent of all those who are to receive the service or 100 percent of the landowners within the district petition for the dissolution of the district and none of them

withdraw their signatures from the petition.

Mr. Rees asked if the proposal is that the dissolution could not happen until all debt is paid off or would it cease to operate as a special district but continues to take care of the obligations during a winding down process. He thought the district could be dissolved as long as there is a mechanism in place that is as good as the mechanism before the district was dissolved to take care of the debt.

Mr. Anderson stated the group did not focus on that issue. His assumption was that the district would continue in existence until the debt was satisfied. If the Utah Constitution would allow the district to be dissolved before the debt was retired, the working group could continue in that direction if that is the wish of the subcommittee. The group could also look at the winding down concept.

Mr. Anderson noted the group is suggesting the dissolution process be completed through the adoption of a resolution or entry of an order. Provision has also been made for judicial appeal. Exceptions to the basic dissolution procedure are drainage and irrigation districts.

**MOTION:** Rep. Dillree moved that petitioners for withdrawal be given a written notice of denial and why the denial occurred.

Mr. Anderson explained the reason for having the deadline is to benefit the people who requested the withdrawal to give them an opportunity to force a decision.

Mr. Rex Ausburn, Snyderville Basin Sewer Improvement District, commented that a requirement for written findings of fact are going to be costly. He suggested an intermediate step requiring the district management to give some type of written explanation for the denial.

Mr. Rees suggested if the board fails to take any action in the 30 days and the withdrawal is deemed denied, a presumption could be added that the denial is arbitrary and capricious which places the burden on the board, if challenged, to come forward with something to convince the court why the denial is appropriate.

The committee voted on the motion which passed unanimously.

The subcommittee discussed the possibility of extending the proposed 30-day period to 90 days. Mr. Ausburn stated that 90 days is a relatively short period of time considering all the steps that must be taken in the process.

**MOTION:** Rep. Dillree moved to request the working group to address the issue of possibly extending the 30-day period to 90 days or longer if necessary. The group would report back to the subcommittee at a later meeting. Staff could address the issue as well. The motion passed unanimously.

**MOTION:** Rep. Dillree moved to approve the outlines for uniform special district withdrawal and dissolution procedures as amended. The motion passed unanimously.

**MOTION:** Rep. Dillree moved to approve the minutes of August 22, 2000. The motion passed unanimously.

**4. Adjusting Common Boundaries** - Mr. Anderson reviewed Section XI on page 25 of the mailing packet regarding adjusting common borders. Currently there are laws that allow improvement districts to adjust their common boundaries and provides a relatively simple procedure to do so if they provide the same type of service. The working group felt the concept is good government and should not be limited to the same type of districts. It is proposed that both affected districts must provide notice and hold public hearings before completing the boundary adjustment. The boundary adjustment will not be effective unless both districts approve it through a resolution adopted by their respective boards of trustees. Designated state and county officials must be notified of the boundary adjustment before the adjustment will be effective.

**MOTION:** Rep. Dillree moved to accept the proposed language in Section XI and that it be included in the draft legislation. The motion passed unanimously.

**5. Special Districts Eminent Domain** - Mr. Rees distributed and briefly reviewed a summary of eminent domain powers of independent special districts. Eminent domain powers are given to most districts. He indicated he could find no provision that would grant or deny that power to cemetery maintenance districts. Public transit districts themselves are not given eminent domain power but the statute indicates the state, a municipality, or a county may acquire private property interests by eminent domain, including fee simple, easements, air rights, rights-of-way, and other private property interests necessary to the establishment and operation of a public transit district.

Mr. Jan Furner, Utah Association of Special Districts, explained the UTA has been under scrutiny for a long period of time. He noted that generally speaking, the previous UTA board was very concerned about having the supreme power of eminent domain.

**MOTION:** Rep. Dillree moved to place UTA under same requirement as the Department

of Transportation as it relates to eminent domain.

Ms. Kathryn Pett, General Counsel for UTA, suggested that the motion apply to any public transit district that is constructing or operating a fixed guideway system. A fixed guideway would encompass either a light rail or commuter rail line. The subcommittee may also want to consider having the motion apply to those transit districts that service a population in excess of 200,000.

**AMENDED MOTION:** Rep. Dillree amended the motion to allow public transit districts implementing, constructing, or operating fixed guideway systems to be allowed eminent domain under existing transportation guidelines. She requested Mr. Rees and Ms. Pett refine the language to make it acceptable to legal counsel and counsel for the public transit districts that may be affected. The language would be brought back before the subcommittee for review. The motion passed unanimously.

**6. Discussion of Future Meeting Dates and How to Proceed -** The next meeting was tentatively scheduled for Tuesday, October 17, at 9:00 a.m. in Room 414. (Note: The meeting date was subsequently changed to Monday, October 23.)

**MOTION:** Rep. Anderson moved to adjourn. The motion passed unanimously. Chair Murray adjourned the meeting at 10:55 a.m.

